

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 19-2169

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520

and

U.S. CENTRAL INTELLIGENCE AGENCY,
Office of General Counsel
1000 Colonial Farm Dr.
McLean, VA 22101

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of State and the U.S. Central Intelligence Agency under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agencies from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of State (State) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the records that Plaintiff seeks.

7. Defendant U.S. Central Intelligence Agency (CIA) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). CIA has possession, custody, and control of the records that Plaintiff seeks.

STATEMENT OF FACTS

State Department Personal Email FOIA Request

8. On November 29, 2018, American Oversight submitted a FOIA request to State, seeking:

- 1) All records reflecting email communications on non-classified email systems (including any email attachments) with any non-governmental email address attributed to Secretary Mike Pompeo.

Your agency may limit its search to the following individuals:

- a) Any person acting in the capacity of chief of staff to Secretary of State Pompeo
- b) Lisa Kenna
- c) Toni Porter
- d) Ulrich Brechbul
- e) Brian Bulatao
- f) Susan Pompeo
- g) Michael McKinley
- h) David Hale

- 2) All emails sent from (a) any non-governmental email address attributed to Secretary Pompeo to (b) any governmental email address associated with Secretary Pompeo. Please include all messages, including those that have been forwarded to Secretary Pompeo's governmental email address or on which Secretary Pompeo's governmental email address is carbon copied.

9. American Oversight requested all responsive records from April 26, 2018, through the date a search is conducted.

10. By letter dated March 4, 2019, State informed American Oversight that it had assigned the request tracking number F-2019-01723.

11. American Oversight has not received any further communications from State concerning the State Department Personal Email FOIA Request.

CIA Personal Email FOIA Request

12. Also on November 29, 2018, American Oversight submitted a FOIA request to CIA seeking:

- 1) All records reflecting email communications on non-classified email systems (including any email attachments) with any non-governmental email address attributed to former Director Mike Pompeo.

Your agency may limit its search to the following individuals:

- a) Any person acting in the capacity of chief of staff to Director Pompeo
 - b) Toni Porter
 - c) Brian Bulatao
 - d) Brittany Bramell
- 2) All emails sent from (a) any non-governmental email address attributed to Director Pompeo to (b) any governmental email address associated with Director Pompeo. Please include all messages, including those that have been forwarded to Director Pompeo's governmental email address or on which Director Pompeo's governmental email address is carbon copied.

13. American Oversight requested all responsive records from January 20, 2017, to April 26, 2018.

14. American Oversight has received no communications from CIA concerning the CIA Personal Email FOIA Request.

State Department Cotton/Rubio FOIA Request

15. On February 22, 2019, American Oversight submitted a FOIA request to State seeking:

All records reflecting communications (including emails, email attachments, calendar invitations or entries, telephone call logs, text messages, and notes from any meetings or phone calls) between (1) Secretary of State Mike Pompeo, Adviser to the Secretary Toni Porter, or anyone serving as Secretary Pompeo's Chief of Staff, and (2) Senator Tom Cotton or Senator Marco Rubio, or anyone on their staffs, including any communications from email addresses ending in cotton.senate.gov, tomcotton.com, rubio.senate.gov, or marcorubio.com.

16. American Oversight explicitly requested any notes or records created by assistants or aides to Secretary Pompeo reflecting the fact of or content of such communications with Senators Cotton or Rubio.

17. American Oversight requested all responsive records from April 26, 2018, through the date a search is conducted.

18. By letter dated May 31, 2019, State informed American Oversight that it had assigned the request tracking number F-2019-03691.

19. American Oversight has not received any further communications from State concerning the State Department Cotton/Rubio FOIA Request.

CIA Cotton/Rubio FOIA Request

20. Also on February 22, 2019, American Oversight submitted a FOIA request to CIA seeking:

All records reflecting communications (including emails, email attachments, calendar invitations or entries, telephone call logs, text messages, and notes from any meetings or phone calls) between (1) former CIA Director Mike Pompeo or former Chief of Protocol Toni Porter, or anyone serving as Director Pompeo's Chief of Staff, and (2) Senator Tom Cotton or Senator Marco Rubio, or anyone on their staffs including any communications from email addresses ending in cotton.senate.gov, tomcotton.com, rubio.senate.gov, or marcorubio.com.

21. American Oversight explicitly requested any notes or records created by assistants or aides to Director Pompeo reflecting the fact of or content of such communications with Senators Cotton or Rubio.

22. American Oversight requested all responsive records from January 23, 2017, through April 26, 2018.

23. By letter dated March 25, 2019, CIA informed American Oversight that it had assigned the request tracking number F-2019-01079.

24. American Oversight has not received any further communications from CIA concerning the CIA Cotton/Rubio FOIA Request.

Pompeo External Emails FOIA Request

25. On May 2, 2019, American Oversight submitted a FOIA request to State seeking:

All email communications on unclassified systems sent by Secretary Pompeo or anyone serving as his Chief of Staff, to any email address ending in .com, .net, .org, .edu, .co, .ru, or .sa (including complete email chains).

In an effort to accommodate the Department of State and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by Mr. Pompeo and his Chief(s) of Staff. To be clear, American Oversight still requests that complete email chains be produced, displaying both the responsive sent messages and the prior received messages in each email chain. This means, for example, that both Secretary Pompeo's response to an email from a .com domain and the initial received message are responsive to this request.

26. American Oversight requested all responsive records from April 26, 2018, through the date a search is conducted.

27. American Oversight has not received any communications from State concerning the Pompeo External Emails FOIA Request.

Exhaustion of Administrative Remedies

28. As of the date of this complaint, Defendants have failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

29. Through Defendants' failure to respond to Plaintiff's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

30. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

31. Plaintiff properly requested records within the possession, custody, and control of Defendants.

32. Defendants are agencies subject to FOIA and must therefore make reasonable efforts to search for requested records.

33. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

34. Defendants' failure to conduct an adequate search for responsive records violates FOIA.

35. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

36. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. Plaintiff properly requested records within the possession, custody, and control of Defendants.

38. Defendants are agencies subject to FOIA and must therefore release in response to FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

39. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to its FOIA requests.

40. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to segregate exempt information in otherwise non-exempt records responsive to its FOIA requests.

41. Defendants' failure to provide all non-exempt responsive records violates FOIA.

42. Plaintiff is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiff's FOIA requests;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiff's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
- (4) Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 23, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton
D.C. Bar No. 1002367

/s/ Daniel A. McGrath

Daniel A. McGrath
D.C. Bar No. 1531723

/s/ John E. Bies

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